

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013030894

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On March 22, 2013, Parents on behalf of Student (Student) filed a Due Process Hearing Request (complaint), naming the Fairfield Suisun Unified School District (District) as respondent. On May 14, 2013, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). The District filed an opposition on May 14, 2013.

PROCEDURAL HISTORY

Student's complaint alleged four issues. In Issue One, Student alleges that the District failed to provide Student with a free appropriate public education (FAPE) when it refused to provide "In-home Instruction" to Student. In Issue Two, Student alleged a denial of FAPE because the District failed to provide him with appropriate counseling services. Student alleged in Issue Three that the District retaliated against Student's parents. In Issue Four, Student contends that the District's denial of FAPE violates Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and other federal and state civil rights laws. On April 30, 2013, the District filed a motion to dismiss issues seeking the dismissal of Issues One, Three, and Four on grounds that the Office of Administrative Hearings (OAH) lacks jurisdiction over these issues. On May 3, 2013, Student filed an opposition to the motion.

On May 6, 2013, OAH, by ALJ Charles Marson, issued an order which granted the District's motion in its entirety as to Issues Three and Four. As to Issue One, OAH ruled: "The District's motion to dismiss the First Issue is therefore denied insofar as the issue alleges denial of a FAPE, and granted insofar as it alleges denial of services under Education Code section 48206.3." (May 6, 2013 Order at p. 2.)

On May 8, 2013, the undersigned ALJ conducted a Prehearing Conference (PHC). On May 8, 2013, OAH issued an order setting the due process hearing to commence on May 16, 2013; and setting forth the issues to be heard as follows:

(A.) Did the District provide Student with a free appropriate public education (FAPE) when it refused to provide Student “in-home” instruction in January 2012?

(B) Did the District provide Student appropriate counseling services in home to address his unique needs?

The PHC order also noted that Student intended to file motions to continue the matter due to the unavailability of counsel, and to file an amended complaint. Student filed his motion to continue on May 10, 2013. The District filed its opposition to that motion on May 13, 2013. On May 13, 2013, OAH, by Presiding Judge Timothy Newlove, granted the motion and continued the hearing until June 10, 2013.

On May 14, 2013, Student filed this motion for leave to file an amended complaint. In the amended complaint, Student alleges five issues. In Issue One, Student alleges that the District has deprived him of a FAPE because he has not been provided with his full educational records. In Issue Two, Student alleges that the District failed in its “child find” obligations in fall 2011. In Issue Three, Student contends that the District has deprived him of a FAPE by failing to provide him with an appropriate level emotional/mental health/counseling services to meet his unique needs. In Issue Four, Student alleges that the District failed to provide educational services to Student to permit him to make educational progress during the time period at issue.¹

APPLICABLE LAW AND DISCUSSION

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)² The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).) In its opposition, the District does not consent to the proposed amended complaint. Because of the granting of the motion to continue, Student’s motion is timely.

In its opposition, the District correctly contends that the amended complaint contains new issues which are unrelated to the issues alleged in the complaint. If Student is granted leave to file, the District contends that it would be prejudiced by being forced to mount a

¹ Student also alleges an Issue Five that his parents are entitled to reimbursement for mental health services that they funded. This is actually a remedy for Issues Two, Three and Four.

² All statutory citations are to Title 20 United States Code unless otherwise indicated.

defense to issues which were not raised in the complaint and that Student could have raised these issues in a timely manner. The new issues raised are directly related to the issues previously raised and the supporting facts alleged in the complaint. By permitting the amended complaint, all issues can be litigated in single forum which will result in judicial economy. Thus, Student's motion for leave to file the amended complaint is granted.

ORDER

1. Student's motion for leave to file the amended complaint is granted and the amended complaint shall be deemed filed as of the date of this order.

2. All current dates are hereby vacated, and OAH shall issue a new scheduling order.

IT IS SO ORDERED.

Dated: May 15, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings